

1 JOHN WALSHE MURRAY (074823)
2 ROBERT A. FRANKLIN (091653)
2 RACHEL RAGNI LARRENAGA (241061)
MURRAY & MURRAY
3 A Professional Corporation
4 19400 Stevens Creek Blvd., Suite 200
Cupertino, CA 95014-2548
Telephone: (650) 852-9000; (408) 907-9200
5 Facsimile: (650) 852-9244
Email: jwmurray@murraylaw.com
6 Email: rfranklin@murraylaw.com
Email: rragni@murraylaw.com

7
8 Attorneys for Debtors

9 **UNITED STATES BANKRUPTCY COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA**

11 **SAN JOSE DIVISION**

12 In re:) Chapter 11
13) Cases Jointly Administered
14 **COMMUNITY TOWERS I, LLC,**) Case No. 11-58944-SLJ-11
15 A Delaware Limited Liability Company,)
Employer Tax I.D. No. 75-2456729,)
16 **COMMUNITY TOWERS II, LLC,**) Case No. 11-58945-SLJ-11
17 A Delaware Limited Liability Company,)
Employer Tax I.D. No. 75-2560662,)
18 **COMMUNITY TOWERS III, LLC,**) Case No. 11-58948-SLJ-11
19 A Delaware Limited Liability Company,)
Employer Tax I.D. No. 32-0065635,)
20 **COMMUNITY TOWERS IV, LLC,**) Case No. 11-58949-SLJ-11
21 A Delaware Limited Liability Company,)
Employer Tax I.D. No. 77-0379075,)
22 Debtor(s).)
23 111 W. Saint John Street, Suite 705)
San Jose, California 95113)
24)
25)
26)
Date: May 31, 2012
Time: 1:30 p.m.
Place: United States Bankruptcy Court
280 S. First St., Room 3099
San Jose, CA 95113
Judge: Honorable Stephen L. Johnson

Hearing on Plan Confirmation

27 **DEBTORS' JOINT PLAN OF REORGANIZATION**
(DATED MARCH 27, 2012)

TABLE OF CONTENTS

		<u>Page</u>
1	ARTICLE I. DEFINITIONS	2
2	ARTICLE II. DESIGNATION OF CLASSES OF CLAIMS AND INTERESTS.....	9
3	2.1 Class 1 (Allowed Secured Claim of the Santa Clara County Tax Collector).	9
4	2.2 Class 2 (Allowed CIBC Claim).	9
5	2.3 Class 3 (Allowed Priority Claims).....	9
6	2.4 Class 4 (Pre-Paid Rent Claims).....	9
7	2.5 Class 5 (Lease Deposit Claims).....	9
8	2.6 Class 6 (General Unsecured Claims).....	9
9	2.7 Class 7 (General Unsecured Claims of John and Rosalie Feece).....	9
10	2.8 Class 8 (Interests).....	9
11	ARTICLE III. TREATMENT OF CLAIMS AND INTERESTS NOT IMPAIRED UNDER THE PLAN.....	10
12	3.1 Class 1 (Allowed Secured Claim of the Santa Clara County Tax Collector).	10
13	3.2 Class 3 (Priority Claims).....	10
14	3.3 Class 4 (Pre-Paid Rent Claims).....	11
15	3.4 Class 8 (Interests).....	11
16	ARTICLE IV. TREATMENT OF UNCLASSIFIED CLAIMS.....	11
17	4.1 Allowed Administrative Claims.....	11
18	4.2 Tax Claims Entitled to Priority under Section 507(a)(8)	12
19	ARTICLE V. TREATMENT OF CLASSES OF CLAIMS AND INTERESTS THAT ARE IMPAIRED UNDER THE PLAN	12
20	5.1 Class 2 (Allowed CIBC Claim).	12
21	5.2 Class 5 (Lease Deposit Claims).....	13
22	5.3 Class 6 (Allowed General Unsecured Claims)	13
23	5.4 Class 7 (General Unsecured Claims of John and Rosalie Feece)	14
24	ARTICLE VI. MEANS FOR IMPLEMENTATION OF THE PLAN.....	14
25	6.1 Business Operation.	14
26	6.2 Payments On the Effective Date.	14
27	6.3 Prosecution of Retained Claims.....	15
28	6.4 Distributions.....	15
29	6.4.1 Distribution Account.....	15
30	6.4.2 Distribution Addresses.....	15
31	6.4.3 Withholding Taxes.....	15
32	6.4.4 Loans.....	15
33	6.5 Responsible Person.	16
34	6.6 Disbursing Agent.	17
35	6.7 De Minimis Distributions.	17
36	6.8 Unclaimed Distributions.	17

1	6.9	Tax Returns, Payments and Refunds.....	17
2	6.10	Further Orders.....	18
3	6.11	Post-Confirmation Employment of Personnel.....	18
4	6.12	Post-Confirmation Compensation and Reimbursement of Debtors' Professionals.....	18
5	6.13	Post-Confirmation Notice.....	19
6	6.14	Revesting of Property of the Estates.....	20
7	6.15	Exemption From Certain Transfer Taxes.....	20
8	6.16	Post-Confirmation Reports, Fees, and Final Decree.....	20
9	6.16.1	U.S. Trustee Fees.....	20
10	6.16.2	Post-Confirmation Reports.....	20
11	6.16.3	Final Decree.....	20
12	ARTICLE VII. EXECUTORY CONTRACTS AND UNEXPIRED LEASES	.....	21
13	7.1	Treatment of Executory Contracts and Unexpired Leases.....	21
14	7.2	Assumption of Executory Contracts and Unexpired Leases.....	21
15	7.3	Effect of Assumption of Executory Contracts and Unexpired Leases.....	21
16	7.4	Adding and Removing Executory Contracts and Unexpired Leases.....	21
17	7.5	Defaults.....	22
18	7.6	Rejection of Executory Contracts and Unexpired Leases.....	22
19	7.7	Rejection Claims.....	22
20	ARTICLE VIII. PROOFS OF CLAIM; OBJECTIONS	.....	22
21	8.1	Time for Filing Proofs of Claim.....	22
22	8.2	Ownership and Transfers of Claims.....	22
23	8.3	Amendments to Claims.....	23
24	8.4	Claim Objections.....	23
25	8.5	Disallowance of Claims.....	23
26	8.6	Reserve Accounts.....	24
27	8.6.1	Disputed Claims Reserve Account.....	24
28	8.7	Distributions.....	24
29	ARTICLE IX. DEFAULT	.....	24
30	ARTICLE X. PRESERVATION OF RETAINED CLAIMS and Avoidance Actions	.....	25
31	ARTICLE XI. RETENTION OF JURISDICTION	.....	26
32	ARTICLE XII. EFFECT OF ORDER OF CONFIRMATION	.....	27
33	12.1	Binding Effect of Plan.....	27
34	12.2	Discharge.....	27
35	12.3	Full Satisfaction of Claims and Interests.....	27
36	12.4	Injunction.....	28
37	12.5	Judgments Null and Void.....	28
38	12.6	Preservation of Insurance.....	28
39	ARTICLE XIII. CONDITIONS PRECEDENT	.....	28
40	13.1	Conditions Precedent.....	28
41	13.2	Waiver of Conditions.....	28

1	ARTICLE XIV. MISCELLANEOUS	29
2	14.1 No Admissions.....	29
3	14.2 Revocation of the Plan.....	29
4	14.3 Successors and Assigns.....	29
5	14.4 Nonconsensual Confirmation.....	29
6	14.5 Destruction of Records.	30
7	14.6 Saturday, Sunday and Legal Holiday.....	30
8	14.7 Plan Interpretation.....	30
9	14.8 Modification.....	30
10	14.9 Setoff/Recoupment.	30
11	14.10 Waiver.	30
12	14.11 Notices.	31
13	14.12 Reservation of Rights.....	31
14	14.13 Exhibits.	32

TABLE OF EXHIBITS

EXHIBIT A LOAN DOCUMENTS MODIFICATION

EXHIBIT B LIST OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES TO BE ASSUMED PURSUANT TO PLAN

PRELIMINARY STATEMENT

Community Towers I, LLC, Community Towers II, LLC, Community Towers III, LLC, and
Community Towers IV, LLC (the “Debtors”) propose their DEBTORS’ JOINT PLAN OF
REORGANIZATION (DATED MARCH 27, 2011) (the “Plan”) pursuant to the provisions of Chapter 11
of the Bankruptcy Code.

On September 26, 2011, the Debtors each filed a Voluntary Petition under Chapter 11 of the Bankruptcy Code. On September 27, 2011, the Court entered its ORDER AUTHORIZING AND DIRECTING JOINT ADMINISTRATION OF ESTATES.

Chapter 11 sets forth the rules and procedures under which financially distressed entities may be reorganized or liquidated pursuant to a plan presented to Creditors and Interest Holders for consideration and approval. Confirmation (approval) of the Plan is the culmination of that process.

This Plan sets forth the Debtors' proposal for the reorganization of the Debtors and the treatment of all Allowed Claims against the Debtors. With the Plan, Creditors and Interest Holders will receive the DISCLOSURE STATEMENT FOR DEBTORS' JOINT PLAN OF REORGANIZATION (DATED MARCH 27, 2012) (the "**Disclosure Statement**"). With the Plan and Disclosure Statement, Creditors will receive a Ballot for voting on the Plan. Class 1 Creditors, Class 3 Creditors, Class 4 Creditors and Class 8 Interests are not impaired under the Plan and are therefore conclusively presumed to have accepted the Plan. Accordingly, acceptances with respect to these classes are not being solicited and no Ballots need be returned by members of these classes. Acceptances of the Plan are therefore being solicited only from members of Classes 2, 5, 6 and 7. Consequently, only holders of Classes 2, 5, 6 and 7 claims need return their Ballots.

The Disclosure Statement includes a summary of the Debtors' history, a summary of significant events during the Chapter 11 cases, a summary of the Debtors' assets and liabilities, a summary of what Creditors and Interest Holders will receive under the Plan, a discussion of certain alternatives to the Plan, and a summary of the procedures and voting requirements necessary for Confirmation of the Plan.

You should thoroughly review both the Plan and the Disclosure Statement before deciding whether you will accept or reject the Plan.

1 CREDITORS AND INTEREST HOLDERS WISHING TO VOTE ON THE PLAN
2 SHOULD COMPLETE THE BALLOT PROVIDED AND RETURN IT NO LATER THAN **MAY**
3 **21, 2012 AT 5:00 P.M. PACIFIC DAYLIGHT TIME TO:**

4 **Murray & Murray**
5 **A Professional Corporation**
6 **Attn: Rachel Ragni Larrenaga**
7 **19400 Stevens Creek Boulevard, Suite 200**
8 **Cupertino, California 95014-2548**

9
10 IF YOUR BALLOT IS NOT RETURNED BY MAY 21, 2012 AT 5:00 P.M. PACIFIC
11 DAYLIGHT TIME, IT MAY NOT BE CONSIDERED. BALLOTS WHICH ARE RETURNED
12 BUT NOT PROPERLY EXECUTED WILL NOT BE CONSIDERED. BALLOTS WHICH ARE
13 EXECUTED BUT WHICH FAIL TO INDICATE EITHER ACCEPTANCE OR REJECTION OF
14 THE PLAN WILL BE CONSIDERED AS ACCEPTING THE PLAN.

15 If any class of Claims does not accept the Plan, the Debtors may elect to seek Confirmation
16 of the Plan under Section 1129 (b) of the Bankruptcy Code. Confirmation under Section 1129 (b)
17 can, in appropriate circumstances, take place notwithstanding the rejection of, or objection to, the
18 Plan by Creditors and Interest Holders. If required, as permitted by the terms of the Plan, the Plan
19 may be modified at or prior to the hearing on Confirmation to permit Bankruptcy Court approval
under Section 1129 (b). If the Plan is not confirmed, the Bankruptcy Court may order the
Bankruptcy Cases dismissed, or converted to cases under Chapter 7 of the Bankruptcy Code, or the
Debtors or other parties in interest may propose a different plan.

20 **ARTICLE I.**

21 **DEFINITIONS**

22 As used in the Plan, the following terms will have the respective meanings specified below:

23 **1.1 “Administrative Claim”** means a Claim for any cost or expense of administration of
24 a kind specified in Section 503(b) of the Bankruptcy Code, including any actual and necessary costs
25 and expenses of preserving the Bankruptcy Estates incurred on or after the Petition Date and through
26 and including the Confirmation Date, any cure amounts that must be paid in connection with the
27 assumption of any executory contract or unexpired lease of the Debtors under Section 365 of the
28 Bankruptcy Code, fees due to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6), and

1 compensation for legal or other services and reimbursement of expenses allowed by the Bankruptcy
2 Court under Sections 330 and 331 of the Bankruptcy Code or otherwise.

3 **1.2 “Administrative Claims Bar Date”** means that date which is thirty (30) days
4 following the date of the Notice of Confirmation.

5 **1.3 “Administrative Claim Objection Deadline”** means sixty (60) days after the
6 Administrative Claims Bar Date or such later date as may be established by the Bankruptcy Court
7 for cause.

8 **1.4 “Allowed” or “Allowed Amount”** means the amount in which any Claim or Interest
9 is allowed. Unless otherwise expressly required by the Bankruptcy Code or the Plan, the Allowed
10 Amount of any Claim does not include interest on such Claim from or after the Petition Date.

11 **1.5 “Allowed Administrative Claim”** means all or any portion of an Administrative
12 Claim that has either been Allowed by a Final Order or to which there has been no objection within
13 the time period established by the Plan or by an order of the Bankruptcy Court.

14 **1.6 “Allowed Claim”** means a Claim: (a) in respect to which a proof of Claim has been
15 filed with the Bankruptcy Court by the applicable Claims Bar Date and to which no objection has
16 been filed within the time fixed by the Plan or the Bankruptcy Court; (b) as to which no proof of
17 Claim has been filed and which has been listed on Schedule D, E or F of the Debtors’ Schedules and
18 is not listed as disputed, contingent, unliquidated or unknown as to amount, and to which no
19 objection has been filed within the time fixed by the Plan or the Bankruptcy Court; or (c) which is
20 Allowed by a Final Order. No Claim will be considered an Allowed Claim if: (1) an objection to the
21 allowance thereof is interposed by a party in interest within the time fixed by the Plan or the
22 Bankruptcy Court, and such objection has not been overruled by a Final Order; or (2) the Claim has
23 been satisfied.

24 **1.7 “Avoidance Actions”** means causes of action under Chapter 5 of the Bankruptcy
25 Code.

26 **1.8 “Ballot”** means the voting ballot Creditors will receive for purposes of voting on the
27 Plan.

28 **1.9 “Bankruptcy Cases” or “Cases”** means the bankruptcy cases commenced by the

1 Debtors' filing with the Bankruptcy Court of their Voluntary Petitions under Chapter 11 of the
2 Bankruptcy Code.

3 **1.10** “**Bankruptcy Code**” means title 11, United States Code, § 101, et seq., as in effect
4 and applicable to the Cases.

5 **1.11** “**Bankruptcy Court**” means the United States Bankruptcy Court for the Northern
6 District of California, San Jose Division, or such other court exercising jurisdiction over the Cases.

7 **1.12** “**Bankruptcy Estates**” or “**Estates**” means the estates created by the commencement
8 of the Bankruptcy Cases and comprised of the property described in Section 541 of the Bankruptcy
9 Code.

10 **1.13** “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure promulgated
11 under 28 U.S.C. § 2075, as amended, as applicable to the Bankruptcy Cases.

12 **1.14** “**Business Day**” means a day, Monday through Friday, excluding Legal Holidays.

13 **1.15** “**CIBC**” means CIBC, Inc. a Delaware corporation.

14 **1.16** “**CIBC Action**” means the action commenced or to be commenced by the Debtors
15 against CIBC as further described herein.

16 **1.17** “**Claim**” means any: (a) right to payment, whether or not such right is reduced to
17 judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed,
18 legal, equitable, secured, or unsecured; or (b) right to an equitable remedy for breach of performance
19 if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is
20 reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or
21 unsecured.

22 **1.18** “**Claims Bar Date**” means: (a) with respect to Claims other than those held by non-
23 governmental units, January 24, 2012; (b) with respect to Claims held by governmental units, March
24 26, 2012; (c) with respect to Rejection Claims, the Rejection Claims Bar Date; and (d) with respect to
25 an Administrative Claim, other than as provided in Section 4.1 below for the Claims of the Debtors’
26 Professionals, the Administrative Claims Bar Date.

27 **1.19** “**Claims Objection Date**” means the date ninety (90) days after the Effective Date;
28 provided, however, that the Claims Objection Date may be extended by the Bankruptcy Court for

1 cause upon the *ex parte* motion of the Reorganized Debtors.

2 **1.20 “Confirmation”** means the entry by the Bankruptcy Court of the Order of
3 Confirmation.

4 **1.21 “Confirmation Date”** means the date on which the Bankruptcy Court enters the
5 Order of Confirmation.

6 **1.22 “Confirmation Hearing”** means the hearing held by the Bankruptcy Court to
7 consider Confirmation of the Plan as required by Section 1128(a) of the Bankruptcy Code.

8 **1.23 “Creditor”** means any entity holding a Claim against the Debtors.

9 **1.24 “Debtors”** means Community Towers I, LLC, Community Towers II, LLC,
10 Community Towers III, LLC, and Community Towers IV, LLC, all Delaware limited liability
11 companies.

12 **1.25 “Debtors’ Professionals”** means, collectively, Murray & Murray, A Professional
13 Corporation; Law Offices of Eric Mogensen; and Gattey Law Office; and/or their successors, if any;
14 and such other professionals whose employment by the Debtors prior to the Confirmation Date is
15 approved by order of the Bankruptcy Court, if any; and following the Effective Date, any
16 professionals engaged by the Reorganized Debtors to represent or assist it in fulfilling its duties and
17 obligations as the Reorganized Debtors under the Plan, including such accountant(s) as the
18 Reorganized Debtors may select to complete the Reorganized Debtors’ tax returns and other
19 required filings with governmental authorities having jurisdiction over the Reorganized Debtors, and
20 such legal professionals as might be appropriate to assist in administering the Plan, the Bankruptcy
21 Cases and the Bankruptcy Estates.

22 **1.26 “Disbursing Agent”** means John L. Feece, provided that the Debtors, the
23 Reorganized Debtors or John L. Feece may request that the Bankruptcy Court designate another
24 Person to serve as Disbursing Agent.

25 **1.27 “Disclosure Statement”** means the DISCLOSURE STATEMENT FOR DEBTORS’ JOINT
26 PLAN OF REORGANIZATION (DATED MARCH 27, 2012), including any modification(s) thereof and/or
27 amendment(s) thereto.

28 **1.28 “Disputed Claim”** means a Claim against the Debtors: (a) as to which a proof of

1 Claim has not been filed and/or that has been listed in the Debtors' Schedules as disputed,
2 contingent, unliquidated or unknown as to amount; (b) as to which an objection has been filed
3 within the time fixed by the Bankruptcy Court and which objection has not been withdrawn or
4 disposed of by a Final Order; or (c) by a Person who is a defendant in an adversary proceeding
5 (including an Avoidance Action) which has not been withdrawn or disposed of by a Final Order.

6 **1.29 "Disputed Claims Reserve Account"** means a segregated interest-bearing bank
7 account maintained for the purpose of holding cash attributable to Disputed Claims and administered
8 consistent with the provisions of Section 345 of the Bankruptcy Code.

9 **1.30 "Distribution"** means, as the context requires: (a) the cash to be provided under the
10 Plan to the holders of Allowed Claims; or (b) the payment, transfer, delivery or deposit of cash to
11 Creditors pursuant to the Plan.

12 **1.31 "Distribution Date"** means any date on which a Distribution is made pursuant to the
13 Plan.

14 **1.32 "Effective Date"** means the effective date of the Plan, which will be a date
15 designated by the Debtors at or before the Confirmation Hearing, but which date will be no less than
16 15 calendar days and no more than 60 calendar days following the Confirmation Date, or, in the
17 event that the Effective Date of the Plan is enjoined or stayed by a court of competent jurisdiction for
18 any period of time, no later than 30 calendar days following expiration of such stay or injunction;
19 *provided* that such date may be extended up to an additional 30 calendar days beyond the period set
20 forth above by the Reorganized Debtors, in their sole discretion.

21 **1.33 "Final Order"** means an order entered on the docket by the Bankruptcy Court or
22 such other court exercising jurisdiction over the case, as applicable, which is no longer subject to
23 appeal, certiorari or other proceedings for review or rehearing, and as to which no appeal, certiorari
24 or other proceedings for review or rehearing are pending.

25 **1.34 "General Unsecured Claims"** means any and all general unsecured claims incurred
26 by the Debtors prior to the Petition Date, including Rejection Claims, but not including
27 Administrative Claims, Priority Claims, or Tax Claims.

28 **1.35 "Interest"** means a share in the Debtors, whether or not transferable or denominated

1 as “stock” or similar security.

2 **1.36** “**Interest Holder**” means the holder of an Interest in the Debtors.

3 **1.37** “**Lease Agreement**” or “**Lease Agreements**” means the lease agreement each
4 Tenant has with the Debtors for the lease or rent of a space or unit in the Subject Property.

5 **1.38** “**Lease Deposit Claims**” means a claim for a lease deposit made by a Tenant for the
6 lease or rent of a space or unit in the Subject Property.

7 **1.39** “**Legal Rate**” means per annum interest at the federal judgment rate.

8 **1.40** “**Loan Documents Modification**” means **Exhibit “A”** to the Plan.

9 **1.41** “**Local Rules**” means the Local Rules of the United States District Court for the
10 Northern District of California, as amended, as applicable to these Bankruptcy Cases.

11 **1.42** “**Member**” means any member of an Interest Holder of the Debtors.

12 **1.43** “**Notice of Confirmation**” means the NOTICE OF ORDER CONFIRMING PLAN or
13 similarly titled notice of like effect issued by the Clerk of the Bankruptcy Court following
14 Confirmation.

15 **1.44** “**Notice Parties**” means the Reorganized Debtors, the United States Trustee, the
16 Responsible Person, and any Creditor or party in interest who, after the Confirmation Hearing,
17 serves a notice on the Debtors or Reorganized Debtors and their counsel requesting to be added as a
18 notice party; provided, however, that any Creditor whose Claim has been paid in full will no longer
19 be a Notice Party.

20 **1.45** “**Order of Confirmation**” means the order entered by the Bankruptcy Court
21 approving and confirming the Plan in accordance with the provisions of Chapter 11 of the
22 Bankruptcy Code.

23 **1.46** “**Petition Date**” means September 26, 2011, the date on which the Debtors each filed
24 their individual Voluntary Petitions under Chapter 11 initiating the Bankruptcy Cases and on which
25 date relief was ordered in the Bankruptcy Cases.

26 **1.47** “**Plan**” means this DEBTORS’ JOINT PLAN OF REORGANIZATION (DATED MARCH 27,
27 2012), including any modification(s) hereof and/or amendment(s) hereto that comply with Section
28 1127 of the Bankruptcy Code and Bankruptcy Rule 3019.

1 **1.48** “**Pre-Paid Rent Claim**” means any Allowed Claim by a Tenant for the prepayment
2 of rent to lease or rent a space or unit in the Subject Property.

3 **1.49** “**Prime Rate**” means the prime rate quoted by Bank of America, N.A.

4 **1.50** “**Priority Claim**” means any Allowed Claim entitled to priority pursuant to Section
5 507(a) of the Bankruptcy Code, but not including an Administrative Claim or a Tax Claim.

6 **1.51** “**Rejection Claims**” means an Allowed General Unsecured Claim arising from the
7 Debtors’ rejection of an unexpired lease or executory contract pursuant to the Plan or pursuant to an
8 order of the Bankruptcy Court.

9 **1.52** “**Rejection Claims Bar Date**” means the earlier of: (a) thirty (30) days following the
10 date of the Notice of Confirmation; or (b) thirty (30) days after the effective rejection date with
11 respect to an executory contract or unexpired lease rejected before the Confirmation Date pursuant to
12 a Final Order.

13 **1.53** “**Reorganized Debtors**” means the Debtors on and after the Effective Date.

14 **1.54** “**Responsible Person**” means John L. Feece or such other Person designated by an
15 order of the Bankruptcy Court.

16 **1.55** “**Retained Claims**” means any Claim owned or held by the Debtors against any
17 Person as of the Effective Date, including without limitation, Avoidance Actions, and those Retained
18 Claims referred to in Article X.

19 **1.56** “**Schedules**” means the Debtors’ schedules of assets and liabilities consisting of
20 Schedules “A” through “H” filed with the Bankruptcy Court pursuant to Section 521(a)(1) of the
21 Bankruptcy Code and Bankruptcy Rule 1007(b), as may be amended at any time prior to
22 Distribution.

23 **1.57** “**Subject Property**” means the two building, 305,000 square foot office complex
24 located at 111 West Saint John Street and 111 North Market Street, San Jose, California.

25 **1.58** “**Tax Claim**” means any Allowed Claim against the Debtors entitled to priority
26 pursuant to Section 507(a)(8) of the Bankruptcy Code.

27 **1.59** “**Tenant**” means a Person who rents or leases a space or unit in the Subject Property
28 from the Debtors.

1 A capitalized term used in the Plan that is not herein defined but is defined in the Bankruptcy
2 Code or the Bankruptcy Rules will have the meaning ascribed to such term in the Bankruptcy Code
3 or the Bankruptcy Rules.

4 **ARTICLE II.**

5 **DESIGNATION OF CLASSES OF CLAIMS AND INTERESTS**

6 The Allowed Claims against and Interests in the Debtors are designated and classified below
7 for purposes of the Plan. Except to the extent that the Plan provides otherwise, a Claim or Interest
8 that is properly includable in more than one class is classified in a particular class only to the extent
9 that it qualifies within the description of that class, and is placed in a different class to the extent it
10 qualifies within the description of such different class.

11 **2.1 Class 1 (Allowed Secured Claim of the Santa Clara County Tax Collector).**

12 Class 1 consists of the Allowed Secured Claim of the Santa Clara County Tax Collector
13 arising on or before the Effective Date of the Plan.

14 **2.2 Class 2 (Allowed CIBC Claim).**

15 Class 2 consists of the Allowed Secured Claim of CIBC.

16 **2.3 Class 3 (Allowed Priority Claims).**

17 Class 3 consists of Allowed Priority Claims, if any.

18 **2.4 Class 4 (Pre-Paid Rent Claims).**

19 Class 4 consists of Allowed Pre-Paid Rent Claims.

20 **2.5 Class 5 (Lease Deposit Claims).**

21 Class 5 consists of Allowed Lease Deposit Claims.

22 **2.6 Class 6 (General Unsecured Claims).**

23 Class 6 consists of Allowed General Unsecured Claims not included in Class 7.

24 **2.7 Class 7 (General Unsecured Claims of John and Rosalie Feece).**

25 Class 7 consists of the Allowed General Unsecured Claims of John and Rosalie Feece.

26 **2.8 Class 8 (Interests).**

27 Class 8 consists of the Allowed Interests.

28 / / /

ARTICLE III.

TREATMENT OF CLAIMS AND INTERESTS NOT IMPAIRED UNDER THE PLAN

The below classes of Claims and Interests are not impaired under the Plan and will receive the treatment described below:

3.1 Class 1 (Allowed Secured Claim of the Santa Clara County Tax Collector).

Class 1 consists of the Allowed Secured Claim of the Santa Clara County Tax Collector for real property taxes arising on or before the Effective Date and secured by the Subject Property. The Allowed Secured Claim of the Santa Clara County Tax Collector arising on or before the Effective Date will be paid in full when due. Pursuant to Section 1129(b)(2)(A)(i), the Santa Clara County Tax Collector shall retain its liens securing its Claim(s) on the Subject Property, to the extent not avoidable and to the extent of the Allowed amount of such Claim(s).

The holder of the Class 1 Claim is unimpaired under the Plan and is presumed to have accepted the Plan. Claims are subject to verification and may be reduced after objections are resolved by the Bankruptcy Court. The foregoing is in full and final satisfaction of the Class 1 Claim.

3.2 Class 3 (Priority Claims).

Class 3 consists of all Claims entitled to priority under Bankruptcy Code Section 507(a) other than unclassified Section 503(b) Administrative Claims and Section 507(a)(8) Tax Claims described herein. A preliminary review of the Debtors' books and records indicates that there are no Class 3 Priority Claims. There are no filed Class 3 Claims and the Debtors estimate that on the Effective Date, there will be no Allowed Class 3 Claims. Except to the extent that the holder of a particular Allowed Class 3 Claim, if any, has agreed to a less favorable treatment of such Claim, each holder of an Allowed Class 3 Claim shall be paid in cash, in full upon the later of: (a) the Effective Date; or (b) if such Claim is initially a Disputed Claim, when it becomes an Allowed Claim. The foregoing is in full and final satisfaction of all Class 3 Claims.

The holders of Class 3 Claims, if any, are unimpaired under the Plan and are presumed to have accepted the Plan. Claims are subject to verification and may be reduced after objections are resolved by the Bankruptcy Court. The foregoing is in full and final satisfaction of Class 3 Claims.

3.3 Class 4 (Pre-Paid Rent Claims).

Class 4 consists of all Pre-Paid Rent Claims. On the Effective Date, each holder of an Allowed Class 4 Claim will receive a credit in an amount equal to its Allowed Claim to use in the normal course of business and pursuant to the terms of the Tenant's Lease Agreement. The foregoing is in full and final satisfaction of all Class 4 Claims.

The holders of Class 4 Claims are unimpaired under the Plan and are presumed to have accepted the Plan. Claims are subject to verification and may be reduced after objections are resolved by the Bankruptcy Court.

3.4 Class 8 (Interests).

The Interests of Interest Holders remain unaltered.

The holders of Class 8 Interests are unimpaired under the Plan and are presumed to have accepted the Plan.

ARTICLE IV.

TREATMENT OF UNCLASSIFIED CLAIMS

Unclassified Claims will be treated as follows:

4.1 Allowed Administrative Claims.

Except to the extent that the holder of a particular Administrative Claim has agreed to a different treatment of such Claim, each holder of an Allowed Administrative Claim will be paid in cash, in full, upon the later of: (a) the Effective Date; (b) if such Claim is initially a Disputed Claim, when it becomes an Allowed Administrative Claim; and (c) if such Claim is incurred after the Petition Date in the ordinary course of the Debtors' business, within such time as payment is due pursuant to the terms giving rise to such Claim or as otherwise authorized by the Bankruptcy Court.

Any request for allowance of an Administrative Claim pursuant to Section 503(a) of the Bankruptcy Code, other than by the Debtors' Professionals, must be filed on or before the Administrative Claims Bar Date. If the holder of an asserted Administrative Claim does not file and serve a request for payment of such Claim on the Debtors on or before that date, the holder will be forever barred from asserting such Claim or receiving any payment on account of such Claim. Any objection to the allowance of an Administrative Claim (excluding any claim by the Debtors'

1 Professionals) must be filed no later than the Administrative Claim Objection Deadline. If no
2 objection to the applicable Administrative Claim is filed on or before that date, such Administrative
3 Claim will be deemed Allowed as of that date. The foregoing is in full and final satisfaction of all
4 Administrative Claims.

5 **4.2 Tax Claims Entitled to Priority under Section 507(a)(8).**

6 Except to the extent that the holder of a particular Tax Claim has agreed to a different
7 treatment of such Claim, each holder of an Allowed Tax Claim will be paid in cash, in full upon the
8 later of: (a) the Effective Date; and (b) if such Claim is initially a Disputed Claim, when such Claim
9 becomes an Allowed Tax Claim; provided, however, that no such payment will be made unless and
10 until the holders of Allowed Claims entitled to priority pursuant to Section 507(a)(2) through (a)(7)
11 of the Bankruptcy Code are paid or otherwise receive the treatment accorded to them in the Plan;
12 and, provided further, that any such Tax Claim will be paid no later than five (5) years from the
13 Petition Date with interest as provided by applicable nonbankruptcy law.

14 **ARTICLE V.**

15 **TREATMENT OF CLASSES OF**
CLAIMS AND INTERESTS THAT ARE IMPAIRED UNDER THE PLAN

17 **5.1 Class 2 (Allowed CIBC Claim).**

18 Class 2 consists of the Allowed Secured Claim of CIBC.

19 Pursuant to section 1129(b)(2)(A)(i), CIBC shall retain all liens, security interests and other
20 encumbrances affecting property of the Debtors and the Reorganized Debtors granted in favor of
21 CIBC prior to the Effective Date to the extent of the Allowed Secured Claim of CIBC. The principal
22 amount plus the allowed accrued interest of the Allowed Secured Claim of CIBC will be paid over
23 ten (10) years from the Effective Date together with interest at the Prime Rate or such other rate as
24 may be determined by the Court, adjusted annually and subject to a three and one quarter percent (3
25 1/4%) floor, as follows: (i) for the first five (5) years following the Effective Date, CIBC will receive
26 monthly payments of interest only, commencing on the first day of the first calendar month
27 following the Effective Date, and (ii) for years 6 through 10 following the Effective Date, CIBC will
28 receive monthly payments of principal and interest based on a thirty (30) year amortization schedule.

1 CIBC's Allowed Secured Claim may be paid in full at any time without penalty, and will be paid in
2 all events no later than ten (10) years following the Effective Date. The Subject Property may be
3 transferred subject to the Allowed Secured Claim of CIBC. The foregoing is in full and final
4 satisfaction of all Class 2 Claims.

5 The holder of the Class 2 Claim is impaired. All Claims are subject to verification and are
6 likely to be reduced following resolution of Disputed Claims, including mitigation and offset as
7 applicable.

8 **5.2 Class 5 (Lease Deposit Claims).**

9 Class 5 consists of all Allowed Lease Deposit Claims. On the Effective Date each holder of
10 an Allowed Class 5 Claim will receive a credit in an amount equal to its Allowed Claim to use in the
11 normal course of business and pursuant to the terms of the Tenant's Lease Agreement; provided,
12 however, that if any holder of a Class 5 Claim is entitled, pursuant to the terms of its Lease
13 Agreement, to a refund of any deposit at the expiration of its Lease Agreement, such refund shall be
14 paid, together with interest at the Legal Rate, in twelve (12) monthly installments commencing on
15 the first day of the first month following the date such refund is otherwise due pursuant to the terms
16 of the Lease Agreement. Allowed Lease Deposit Claims may be paid in full at any time without
17 penalty. The foregoing is in full and final satisfaction of all Class 5 Claims.

18 The holders of Class 5 Claims are impaired. All Claims are subject to verification and are
19 likely to be reduced following resolution of Disputed Claims, including mitigation and offset as
20 applicable.

21 **5.3 Class 6 (Allowed General Unsecured Claims).**

22 Class 6 consists of Allowed General Unsecured Claims.

23 Except to the extent that the holder of a particular Allowed Class 6 Claim has agreed to a less
24 favorable treatment of such Claim, each holder of an Allowed Class 6 Claim will be paid in full, plus
25 interest at the Legal Rate in twelve equal monthly installments commencing on the first day of the
26 first month following the Effective Date.

27 Class 6 is impaired. All Claims are subject to verification and are likely to be reduced
28 following resolution of Disputed Claims, including mitigation and offset as applicable.

1 **5.4 Class 7 (General Unsecured Claims of John and Rosalie Feece).**

2 Class 7 consists of the Allowed General Unsecured Claims of John and Rosalie Feece.

3 The principal amount of the Allowed General Unsecured Claims of John and Rosalie Feece
4 will be paid over ten (10) years from the Effective Date together with interest at the Prime Rate,
5 adjusted annually and subject to a three and one quarter percent (3 1/4%) floor, as follows: (i) for the
6 first five (5) years following the Effective Date, John and Rosalie Feece will receive monthly
7 payments of interest only, commencing on the first day of the first calendar month following the
8 Effective Date, and (ii) for years 6 through 10 following the Effective Date, John and Rosalie Feece
9 will receive monthly payments of principal and interest, based on a thirty (30) year amortization
10 schedule. John and Rosalie Feece's Allowed General Unsecured Claims may be paid in full at any
11 time without penalty but not before the Allowed General Unsecured Claims in Class 6 have been
12 paid in full, and will be paid in all events no later than ten (10) years following the Effective Date.

13 If the Debtors experience a cash shortfall in any given month that prevents them from
14 making all payments pursuant to the Plan, the payment due to the Class 7 Creditors shall be reduced
15 by the amount of the shortfall and deferred, and paid only at such time as the Debtors have sufficient
16 cash to make up the shortfall deferral.

17 The foregoing is in full and final satisfaction of all Class 7 Claims.

18 Class 7 is impaired. All Claims are subject to verification and are likely to be reduced
19 following resolution of Disputed Claims, including mitigation and offset as applicable.

20 **ARTICLE VI.**

21 **MEANS FOR IMPLEMENTATION OF THE PLAN**

22 **6.1 Business Operation.**

23 The Reorganized Debtors will continue to operate the Subject Property and will use cash on
24 hand and cash generated from business operations to perform their obligations under the Plan.

25 **6.2 Payments On the Effective Date.**

26 If the Reorganized Debtors do not have sufficient funds on the Effective Date to make the
27 payments provided in the Plan to the holders of Allowed Administrative Claims, Tax Claims and
28 Class 3 Priority Claims, any Member of any Debtor or any affiliate of any Debtor may, in their

1 discretion, loan sufficient funds to the Reorganized Debtors to make such payments, and such loans
2 shall be treated as Class 6 Claims.

3 **6.3 Prosecution of Retained Claims.**

4 Except as otherwise provided in the Plan, subject to Section 6.5 herein, the Responsible
5 Person will collect and prosecute the Retained Claims.

6 **6.4 Distributions.**

7 6.4.1 Distribution Account.

8 If the Disbursing Agent is a Person other than the Responsible Person, the Disbursing Agent
9 shall hold any funds transmitted to it in a segregated trust account for the benefit of holders of
10 Allowed Claims.

11 6.4.2 Distribution Addresses.

12 Unless a Creditor has provided the Debtors or the Reorganized Debtors and their counsel
13 with written notice of a different address, Distributions will be mailed to Creditors at the address set
14 forth in the proofs of Claim filed with the Bankruptcy Court. If no proof of Claim is filed with
15 respect to a particular Claim, the Distribution will be mailed to the address set forth in the Schedules
16 filed by the Debtors.

17 6.4.3 Withholding Taxes.

18 Pursuant to Section 346(h) of the Bankruptcy Code, the Disbursing Agent will be entitled to
19 deduct any federal, state or local withholding taxes from any cash payments made with respect to
20 Allowed Claims, as appropriate. The Disbursing Agent will be permitted to withhold a Distribution
21 to any Creditor who has not provided information requested by the Disbursing Agent for the purpose
22 of fulfilling its obligations hereunder. The Disbursing Agent shall comply with all reporting
23 obligations imposed on it by any governmental unit with respect to withholding and related taxes.

24 6.4.4 Loans.

25 If the Reorganized Debtors do not have sufficient funds to make any payments provided in
26 the Plan, any Member of any Debtor or any affiliate of any Debtor may, in their discretion, loan
27 sufficient funds to the Reorganized Debtors to make such payments, and such loans shall be treated
28 as Class 6 Claims.

1 **6.5 Responsible Person.**

2 On and after the Effective Date, John L. Feece shall serve as the Reorganized Debtors' Chief
3 Executive Officer. To the extent provided by the Plan, he will also serve as the Responsible Person
4 and Disbursing Agent.

5 The Responsible Person will be replaced in the event of a voluntary resignation, death,
6 incapacity or at the request of a party in interest for "cause" upon order of the Bankruptcy Court. In
7 the event of a voluntary resignation, the then-Responsible Person will select a replacement. In all
8 other events, the Court will appoint a replacement. A voluntary resignation will not be effective
9 until a successor has accepted in writing his or her appointment.

10 The Responsible Person will manage the Reorganized Debtors and will have all of the
11 authority to act on behalf of the Reorganized Debtors in accordance with the Bankruptcy Code, the
12 Bankruptcy Rules and Local Rules. Such management will include: (a) fulfilling the duties and
13 obligations of the Debtors and the Reorganized Debtors under the Plan; and (b) fully administering
14 the Bankruptcy Estates as required by the Plan, the Order of Confirmation, the Bankruptcy Code and
15 the Bankruptcy Rules, which duties and obligations include the facilitation of Distributions pursuant
16 to the Plan, reviewing Claims, objecting to Disputed Claims, supervising the preparation and filing
17 of required tax returns of the Debtors and closing the Bankruptcy Cases. The Reorganized Debtors
18 will be substituted as successors to the Debtors and their Estates in all actions and proceedings
19 pending or thereafter commenced in the Bankruptcy Court with respect to Disputed Claims.
20 Without limiting the foregoing, the Responsible Person, acting on behalf of the Reorganized
21 Debtors, will have all of the rights and powers of an estate representative appointed pursuant to
22 Section 1123(b)(3) of the Bankruptcy Code to prosecute or otherwise assert the Retained Claims,
23 including Avoidance Actions, if any.

24 The Responsible Person may, in his discretion, employ such other Entities as may be
25 necessary to assist with implementing the Plan and as otherwise necessary in the Cases.

26 Subject to the Reorganized Debtors' business judgment regarding the pursuit of any
27 particular Retained Claim (which may entail evaluation, among other things, of the cost of pursuing
28 such Retained Claim) and the concurrence of the Reorganized Debtors' Members, the Responsible

1 Person will have no obligation to pursue any affirmative claims on behalf of the Reorganized
2 Debtors or its Estates and any such claims may be abandoned or waived.

3 Upon the Effective Date, the Responsible Person will be authorized on behalf of the Debtors
4 and Reorganized Debtors to execute all instruments, agreements and documents, and to take all
5 actions for and on behalf of the Debtors or Reorganized Debtors necessary to effectuate the
6 provisions of the Plan. Any such document, agreement or instrument executed and delivered by the
7 Responsible Person will be conclusively deemed duly executed by the Debtors and/or Reorganized
8 Debtors without the need for further corporate action or order of the Bankruptcy Court. After the
9 Effective Date, the Responsible Person will be entitled to implement and administer the Plan without
10 the need for further corporate action or order of the Bankruptcy Court.

11 **6.6 Disbursing Agent.**

12 John L. Feece shall serve as Disbursing Agent unless otherwise ordered by the Court.

13 **6.7 De Minimis Distributions.**

14 Notwithstanding any other provision of the Plan, Distributions of less than \$50.00 need not
15 be made on account of any Allowed Claim; provided, however, that Distributions that would
16 otherwise be made but for this provision will carry over to the next Distribution Date until the
17 cumulative amount to which any holder of an Allowed Claim is entitled is more than \$50.00, at
18 which time the cumulative amount of such Distributions will be paid to such holder.

19 **6.8 Unclaimed Distributions.**

20 Any cash Distributions that remain unclaimed or unnegotiated for ninety (90) days following
21 issuance of the check representing the Distribution or are returned for reasons other than the absence
22 of a current or correct address (unless a current or correct address cannot be determined after
23 reasonable inquiry) will become the property of the Reorganized Debtors.

24 **6.9 Tax Returns, Payments and Refunds.**

25 The Reorganized Debtors shall file or cause to be filed any and all delinquent and final tax
26 returns and pay any and all taxes owed by the Debtors and the Reorganized Debtors on a timely
27 basis (other than taxes provided for under the Plan). The Reorganized Debtors reserve all rights to
28 amend prior tax returns of the Debtors and to pursue and collect all potential tax refunds, to claim

1 losses and to take such other actions to the fullest extent allowed by law.

2 **6.10 Further Orders.**

3 Upon motion by the Reorganized Debtors, the Bankruptcy Court may enter such other and
4 further orders as may be necessary or appropriate to facilitate consummation of the Plan.

5 **6.11 Post-Confirmation Employment of Personnel.**

6 The Reorganized Debtors and any Disbursing Agent may employ or contract with Persons
7 and other Entities to perform, or advise and assist them in the performance of, their respective
8 obligations under the Plan. The Reorganized Debtors may continue to employ the Debtors'
9 Professionals for the purposes for which they were employed before the Confirmation Date, and for
10 such additional purposes as the Reorganized Debtors may request, and the Reorganized Debtors may
11 employ such other Professionals as may be necessary to perform their responsibilities under the
12 Plan.

13 **6.12 Post-Confirmation Compensation and Reimbursement of Debtors'
14 Professionals.**

15 All Debtors' Professionals employed by the Reorganized Debtors after the Confirmation
16 Date will be entitled to payment of their reasonable post-Confirmation Date fees and reimbursement
17 of expenses on a monthly basis, subject to the following:

18 Each Debtors' Professional requesting payment of such compensation shall serve a detailed
19 statement of requested fees and expenses on the Notice Parties.

20 Any Notice Party or other party in interest may object to any portion of the requested fees
21 and expenses. Any objection to the payment of fees or reimbursement of expenses must be in
22 writing (and sufficiently detailed to allow the Debtors' Professional whose fees or expenses are
23 subject to the objection an opportunity to respond, and ultimately to allow the Bankruptcy Court to
24 rule on such objection) and served on the Notice Parties and the Debtors' Professional whose fees
25 and expenses are subject to the objection. Such an objection must be served within fifteen (15) days
26 after service of the detailed statement.

27 If there is no objection to a Debtors' Professional's requested fees and expenses within such
28 fifteen (15) day period, the Reorganized Debtors shall promptly pay the requested amount in full. If

1 an objection to a portion of the fees or expenses requested is timely served, the Reorganized Debtors
2 shall promptly pay the undisputed portion of such fees and expenses.

3 To the extent that an objection is timely served, the Responsible Person shall reserve monies
4 in the Disputed Claims Reserve Account in the amount of the disputed fees and expenses pending
5 resolution of said objection.

6 Any objection to a request for payment of fees and expenses will be resolved by either: (a)
7 written agreement between the Debtors' Professional requesting such fees and expenses and the
8 objecting party; or (b) Final Order of the Bankruptcy Court. Resolution by the Bankruptcy Court
9 must be requested by motion filed and served on the objecting party and the Notice Parties in
10 accordance with the Bankruptcy Rules and the Local Rules on not less than twenty-one (21) days
11 notice and such motion may be filed by either the requesting Debtors' Professional or the objecting
12 party. Any opposition to the motion must be filed and served no later than seven (7) days prior to
13 the hearing.

14 Debtors' Professionals will not otherwise be required to file applications for Bankruptcy
15 Court approval of post-Confirmation fees and expenses.

16 **6.13 Post-Confirmation Notice.**

17 Whenever the Plan requires a Person to provide notice of some action, such Person seeking
18 relief shall be required to serve a written notice on the Notice Parties. Such Person shall be
19 authorized to take the action proposed to be taken in such notice upon the expiration of fifteen (15)
20 days from service of the notice unless, before the expiration of the fifteen (15) day period, a party in
21 interest has filed an objection to such proposed action with the Bankruptcy Court and scheduled a
22 hearing on such objection within thirty (30) days of the filing of such objection. If any such
23 objection is filed, the Person seeking the particular relief shall not take the proposed action unless
24 the Bankruptcy Court approves such action or the objecting party withdraws the objection. Service
25 by electronic filing pursuant to Local Rule 9013-3 shall be adequate for all notices and other
26 pleadings filed with the Bankruptcy Court.

27 ///

28 ///

1 **6.14 Revesting of Property of the Estates.**

2 On the Effective Date all property of the Debtors and the Bankruptcy Estates will vest in the
3 Reorganized Debtors, free and clear of any and all liens, encumbrances, Claims and Interests of
4 Creditors and Interest Holders except as provided in the Plan. Revesting does not modify the nature
5 of any contracts assumed by the Debtors and/or Reorganized Debtors.

6 **6.15 Exemption From Certain Transfer Taxes.**

7 Following Confirmation, any sales or transfers will be, to the fullest extent permitted by law,
8 entitled to the exemptions provided for under, and to the fullest extent permitted by, Section 1146(a)
9 of the Bankruptcy Code. The Debtors reserve all rights to request a determination of legal questions
10 related to the tax effects of the Plan as appropriate under Section 1146(b) of the Bankruptcy Code.

11 **6.16 Post-Confirmation Reports, Fees, and Final Decree.**

12 **6.16.1 U.S. Trustee Fees.**

13 Not later than thirty (30) days after the end of each calendar quarter that ends after the
14 Effective Date (including any fraction thereof), the Reorganized Debtors shall pay to the United
15 States Trustee the quarterly fee for such quarter until the Cases are converted, dismissed, or closed
16 pursuant to a Final Decree, as required by 28 U.S.C. § 1930(a)(6).

17 **6.16.2 Post-Confirmation Reports.**

18 Not later than thirty (30) days after the end of each calendar quarter which ends after the
19 Effective Date, the Reorganized Debtors shall file and serve upon the United States Trustee a
20 quarterly post-Confirmation status report in substantially the form provided by the United States
21 Trustee. Further reports must be filed no later than thirty (30) days after the end of every calendar
22 quarter thereafter until the entry of a Final Decree, unless otherwise ordered by the Bankruptcy
23 Court.

24 **6.16.3 Final Decree.**

25 At such time as all motions, contested matters and adversary proceedings have been finally
26 resolved and the Bankruptcy Cases are in a condition to be closed, the Reorganized Debtors shall file
27 an application for the entry of a Final Decree to close the Bankruptcy Cases pursuant to Section 350
28 of the Bankruptcy Code and Rule 3022 of the Bankruptcy Rules. Entry of a Final Decree may be

1 sought by the Reorganized Debtors notwithstanding that all payments required by the Plan have not
2 been completed provided the Bankruptcy Cases are determined by the Bankruptcy Court to be fully
3 administered; provided further, that the Bankruptcy Court retains jurisdiction to hear all matters
4 involving the further administration of the Plan until all holders of Allowed Claims have been paid
5 in full or as otherwise agreed to or provided for under the Plan. The Reorganized Debtors shall
6 serve the application for entry of a Final Decree on the Notice Parties. Pursuant to Local Rule, such
7 application shall be considered by the Bankruptcy Court without a hearing unless within fourteen
8 (14) days after the date of service of the notice, a party in interest files and serves a request for
9 hearing.

10 **ARTICLE VII.**

11 **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

12 **7.1 Treatment of Executory Contracts and Unexpired Leases.**

13 The Debtors reserve the right to move the Bankruptcy Court at any time for authority to
14 assume, assume and assign, or reject, pursuant to Bankruptcy Code Section 365, any and all
15 contracts that are executory and leases that are unexpired.

16 **7.2 Assumption of Executory Contracts and Unexpired Leases.**

17 Each contract and lease listed on **Exhibit “B”** to the Plan will be assumed by the Debtors on
18 the Effective Date to the extent each such contract is executory and each such lease is unexpired.

19 **7.3 Effect of Assumption of Executory Contracts and Unexpired Leases.**

20 All executory contracts and unexpired leases assumed prior to Confirmation or pursuant to
21 the Plan and not otherwise rejected pursuant to the Plan or otherwise will remain in full force and
22 effect, be unimpaired by the Plan except as specifically modified by the Plan and the Order of
23 Confirmation, and be binding on the parties thereto.

24 **7.4 Adding and Removing Executory Contracts and Unexpired Leases.**

25 The provisions of this Article VII may be amended, with appropriate notice to those parties
26 in interest directly affected, at any time prior to the conclusion of the hearing on Confirmation of the
27 Plan, to add or remove executory contracts and unexpired leases to be assumed, assumed and
28 assigned, or rejected pursuant to the Plan.

7.5 Defaults.

Unless other treatment is agreed to between the parties to each assumed contract or lease, if there has been a default in an assumed executory contract or unexpired lease other than the kind specified in Section 365(b)(2) of the Bankruptcy Code, the Debtors shall, on or before the Effective Date: (a) cure, or provide adequate assurance that they will promptly cure, any such default; (b) compensate, or provide adequate assurance that they will promptly compensate, the other party to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and (c) provide adequate assurance of future performance under such contract or lease.

7.6 Rejection of Executory Contracts and Unexpired Leases.

Without admitting the validity of any other executory contracts and unexpired leases, all executory contracts and unexpired leases of the Debtors that are not listed on **Exhibit “B”** to the Plan are hereby rejected by the Debtors as of the Effective Date. Confirmation of the Plan will be deemed to constitute Bankruptcy Court approval of such rejection.

7.7 Rejection Claims.

The holder of a Rejection Claim must file with the Bankruptcy Court, and serve on counsel for the Reorganized Debtors, a proof of Claim relative to such Rejection Claim on or before the Rejection Claims Bar Date or be forever barred from asserting any such Claim or receiving any payment or other Distribution on account of such Claim.

ARTICLE VIII.

PROOFS OF CLAIM; OBJECTIONS

8.1 Time for Filing Proofs of Claim.

Proofs of Claim, when required, must be filed with the Bankruptcy Court no later than the applicable Claims Bar Date (which for most prepetition Claims is January 24, 2012 and for governmental units is March 26, 2012).

8.2 Ownership and Transfers of Claims.

Distributions to Creditors under the Plan will be made to the Persons shown on the Debtors' or the Bankruptcy Court's records on the Effective Date. For purposes of any Distribution under the Plan, the Reorganized Debtors, the Disbursing Agent, the Responsible Person, and their

1 professionals will have no obligation to recognize any transfer of Claims after the Effective Date.

2 ANY PARTY WHO ACQUIRES A CLAIM AGAINST THE
3 DEBTORS OR REORGANIZED DEBTORS AFTER THE
4 EFFECTIVE DATE MUST ARRANGE WITH THE HOLDER OF
5 SUCH CLAIM TO RECEIVE DISTRIBUTIONS TO WHICH THE
6 TRANSFeree MAY BE ENTITLED. NEITHER THE
7 REORGANIZED DEBTORS NOR THE DISBURSING AGENT
8 WILL BE REQUIRED TO TRACK CHANGES IN OWNERSHIP OF
9 CLAIMS AFTER THE EFFECTIVE DATE.

10 **8.3 Amendments to Claims.**

11 Except as provided by the Plan or as otherwise permitted by the Bankruptcy Court, the
12 Bankruptcy Rules or applicable law, proofs of Claim: (a) may not be filed upon expiration of the
13 applicable bar date; and (b) may not be amended after the expiration of the applicable bar date
14 except for amendments to proofs of Claim to decrease the amount or priority thereof.

15 **8.4 Claim Objections.**

16 An objection to a Claim must be filed no later than the Claims Objection Date. The
17 Reorganized Debtors shall have the primary responsibility to review Claims filed against the
18 Debtors, to file objections as appropriate and to resolve Disputed Claims.

19 **8.5 Disallowance of Claims.**

20 All claims of any Entity from whom property is sought by the Debtors, the Reorganized
21 Debtors or the Responsible Person, under Sections 542, 543, 550 or 553, of the Bankruptcy Code, or
22 with respect to whom the Debtors, the Reorganized Debtors or Responsible Person alleges is a
23 transferee of a transfer that is avoidable under Section 522(f), 522(h), 544, 545, 547, 548, 549 or
24 724(a) of the Bankruptcy Code, will be disallowed if: (a) such Entity on one hand, and the Debtors,
25 the Reorganized Debtors or the Responsible Person, on the other hand, agree, or the Bankruptcy
26 Court has determined by a Final Order that such Entity or transferee is liable to turnover any
property or monies under any of the aforementioned sections of the Bankruptcy Code, and (b) such
Entity or transferee has failed to turnover such property by the dates set forth in such agreement or
Final Order.

27 EXCEPT AS OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM FILED
28 AFTER THE APPLICABLE CLAIMS BAR DATE WILL BE DEEMED DISALLOWED AND

EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE OR ACTION, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS WILL NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM IS DEEMED TIMELY FILED BY A FINAL ORDER OF THE BANKRUPTCY COURT ON OR BEFORE THE LATER OF (A) THE CONFIRMATION HEARING, OR (B) 45 DAYS AFTER THE APPLICABLE BAR DATE.

8.6 Reserve Accounts.

8.6.1 Disputed Claims Reserve Account.

9 Subject to the next sentence, any cash that would be distributed to the holder of a Disputed
10 Claim if it were an Allowed Claim on any Distribution Date hereunder will be deposited by the
11 Disbursing Agent into the Disputed Claims Reserve Account. Not later than fifteen (15) days after
12 the Disbursing Agent receives notice that a Disputed Claim has been Allowed in whole or in part,
13 the Disbursing Agent shall Distribute the cash deposited into the Disputed Claims Reserve Account
14 on account of such Disputed Claim. To the extent that cash payments made into the Disputed
15 Claims Reserve Account on account of a Disputed Claim ultimately exceed the cash distributable
16 with respect to the Allowed Amount of such Claim, such excess cash will become the property of the
17 Reorganized Debtors.

8.7 Distributions.

19 Notwithstanding any provision of the Plan specifying a date or time for payments or
20 Distributions of consideration hereunder, payments and Distributions in respect of any Claim that at
21 such date or time is disputed, unliquidated, contingent, or unknown as to amount will not be made
22 until a Final Order with respect to an objection, estimation or valuation of such Claim is entered by
23 the Bankruptcy Court, whereupon appropriate Distributions will be made promptly in accordance
24 with the preceding section.

ARTICLE IX.

DEFAULT

If the Reorganized Debtors default in the performance of any of their obligations under the Plan, and have not cured such default within a period of twenty-one (21) days after receipt of written

1 notice of default from any party in interest affected by the alleged default, then such party in interest
2 may file a motion with the Bankruptcy Court seeking an order directing the Reorganized Debtors to
3 perform such obligations. If the Reorganized Debtors default in the performance of any material
4 obligation under the Plan, any party in interest, including the Office of the United States Trustee,
5 may file a motion with the Bankruptcy Court seeking an order converting the Bankruptcy Cases to
6 cases under Chapter 7 of the Bankruptcy Code. If such motion is granted, the Plan will terminate,
7 and all then remaining property of the Reorganized Debtors will vest in the Chapter 7 estates. Such
8 property will be administered by the Chapter 7 trustee as prescribed in Chapter 7 of the Bankruptcy
9 Code. Any party in interest, including the Reorganized Debtors, may oppose any such motion.

10 **ARTICLE X.**

11 **PRESERVATION OF RETAINED CLAIMS AND AVOIDANCE ACTIONS**

12 The Debtors continue to review transactions and records which process may result in
13 additional claims against persons not yet identified herein, and may also result in other claims
14 against persons identified herein in addition to those identified at this point in time. Nothing in the
15 Plan will be deemed to constitute a waiver of the powers of the Debtors as debtors in possession
16 under the Bankruptcy Code or the Bankruptcy Rules, and the Debtors and the Reorganized Debtors,
17 as applicable, will retain after Confirmation and after the Effective Date, all powers granted by the
18 Bankruptcy Code and the Bankruptcy Rules to a trustee and debtor in possession, including without
19 limitation, those relating to the recovery of property, avoidance of liens, and objections to, and/or
20 subordination of, Claims, including the CIBC Action. Confirmation of the Plan effects no
21 settlement, compromise, waiver or release of any Retained Claim unless the Plan or Order of
22 Confirmation specifically and unambiguously so provides. The failure of the Plan to refer to any
23 particular Retained Claim is not and will not be construed as a settlement, compromise, waiver, or
24 release of any such Retained Claim. All Retained Claims are hereby preserved and will continue to
25 remain valid after the Effective Date. Except as provided in the Plan or the Order of Confirmation,
26 the Debtors and the Reorganized Debtors reserve any and all Claims, Retained Claims, causes of
27 action and rights against any and all third parties, whether such Claims, Retained Claims, causes of
28 action or rights arose before, on or after the Petition Date, the Confirmation Date, the Effective Date

1 and/or the date Distributions are made. The entry of the Confirmation Order will not constitute *res
2 judicata* or otherwise bar, estop or inhibit any actions by the Debtors or the Reorganized Debtors, as
3 applicable, regarding any claims they hold as identified herein or otherwise.

4 Without limiting the generality of the foregoing, the Retained Claims include, but are not
5 limited to, Avoidance Actions, the CIBC Action and all claims identified in the Debtors' Schedules
6 and Statements Of Financial Affairs (as amended or supplemented), if any. Any recovery arising
7 out of or related to an Avoidance Action will be property of the Debtors or Reorganized Debtors as
8 applicable, and will be used to pay Distributions pursuant the Plan.

9 **ARTICLE XI.**

10 **RETENTION OF JURISDICTION**

11 The Bankruptcy Court will have and retain on and after the Confirmation Date and on and
12 after the Effective Date exclusive jurisdiction of the Bankruptcy Cases: (a) to enforce the provisions,
13 purposes, and intent of the Plan; (b) to determine the allowance or disallowance of Claims; (c) to
14 hear and determine proceedings initiated before or after the Confirmation Date and the Effective
15 Date regarding the prosecution of the Retained Claims or any other rights, claims, causes of action or
16 claims for relief held by the Reorganized Debtors against any party, including the recovery of
17 property and subordination of Claims; (d) to fix and approve allowance of compensation and other
18 Administrative Claims, including, if appropriate, payments to be made in connection with the Plan;
19 (e) to adjudicate controversies arising from the terms of the Plan; (f) to hear and determine any
20 proposed modifications of or amendments to the Plan to the extent permitted by Section 1127 of the
21 Bankruptcy Code and Bankruptcy Rule 3019; (g) to enforce or interpret the provisions of the Plan,
22 the Order of Confirmation or any order entered by the Bankruptcy Court in the Bankruptcy Cases;
23 (h) to facilitate the consummation of the Plan; (i) to consider such other matters as may be set forth
24 in the Plan or the Order of Confirmation; (j) to hear and determine any Claim of any Person of any
25 nature whatsoever against the Debtors' Professionals arising in, under or related to the Cases; (k) to
26 hear any other matters pertaining to the Plan; and (l) to enter a Final Decree closing the Bankruptcy
27 Cases. If closed, the Bankruptcy Cases may be reopened at any time to facilitate the provisions of
28 this Article XI of the Plan.

ARTICLE XII.

EFFECT OF ORDER OF CONFIRMATION

As of the Confirmation Date, the effect of the Order of Confirmation will be as provided in Section 1141 of the Bankruptcy Code, and as follows:

12.1 Binding Effect of Plan.

The provisions of the confirmed Plan will bind the Debtors, the Reorganized Debtors, any entity acquiring property under or otherwise accepting the benefits of the Plan, and every Creditor and Interest Holder, whether or not such Creditor or Interest Holder has filed a proof of Claim or Interest in the Bankruptcy Cases, whether or not the Claim or Interest of such Creditor or Interest Holder is impaired under the Plan, and whether or not such Creditor or Interest Holder has accepted or rejected the Plan.

12.2 Discharge.

Except as otherwise provided in the Plan or the Order of Confirmation, the rights afforded under the Plan and the treatment of Claims and Interests under the Plan are in exchange for and in complete satisfaction, discharge, and release of, all Claims, including any interest accrued thereon from and after the Petition Date, against the Debtors, the Reorganized Debtors, the Bankruptcy Estates, or any assets or property of the Debtors, the Reorganized Debtors and the Bankruptcy Estates. Except as provided in the Plan or the Order of Confirmation, pursuant to Bankruptcy Code § 1141(d), Confirmation forever discharges the Debtors and the Reorganized Debtors from any and all Claims and all debts that arose before the Effective Date, and all debts of the kind specified in Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not: (a) a proof of Claim based on such debt is filed or deemed filed under Section 501 of the Bankruptcy Code; (b) a Claim based on such debt is Allowed under Section 502 of the Bankruptcy Code; or (c) the holder of a Claim based on such debt has accepted the Plan.

12.3 Full Satisfaction of Claims and Interests.

Except as otherwise provided in the Plan and the Order of Confirmation, the rights afforded in the Plan will constitute full and complete satisfaction and release of all Claims and Interests, including any interest accrued thereon from and after the Petition Date, against the Debtors, the

1 Reorganized Debtors, the Bankruptcy Estates, or any assets or property of the Debtors, the
2 Reorganized Debtors and the Bankruptcy Estates.

3 **12.4 Injunction.**

4 As of the Confirmation Date, all Persons or Entities that have held, currently hold or may
5 hold a Claim or other debt or liability that is discharged or any other right that is terminated under
6 the Bankruptcy Code or the Plan are permanently enjoined from commencing or continuing any
7 action, the employment of process, or other action, to collect, recover or offset any such Claim or
8 debt as a liability of the Debtors or the Reorganized Debtors to the fullest extent permitted by
9 Bankruptcy Code Section 524.

10 **12.5 Judgments Null and Void.**

11 Any judgment obtained before or after the Confirmation Date in any court other than the
12 Bankruptcy Court will be null and void as a determination of the liability of the Debtors or the
13 Reorganized Debtors.

14 **12.6 Preservation of Insurance.**

15 Nothing in the Plan will diminish or impair the enforceability of any insurance policy that
16 may cover Claims against the Debtors or any other Person.

17 **ARTICLE XIII.**

18 **CONDITIONS PRECEDENT**

19 **13.1 Conditions Precedent.**

20 Each of the following is a condition to the Effective Date:

21 The Confirmation Order is entered and becomes a final order in form
22 and substance satisfactory to the Debtors. The Confirmation Order
23 will provide, among other things, that the Debtors or Reorganized
24 Debtors, as appropriate, are authorized and directed to take all actions
25 necessary or appropriate to consummate the Plan, including, without
limitation, entering into, implementing and consummating the
contracts, instruments, releases, leases, indentures, and other
agreements or documents created in connection with or described in
the Plan.

26 **13.2 Waiver of Conditions.**

27 The conditions set forth above may be waived by the Debtors without notice, leave or order
28 of the Bankruptcy Court, or any formal action other than proceeding to confirm or consummate the

Plan.

ARTICLE XIV.

MISCELLANEOUS

14.1 No Admissions.

Except as specifically provided in the Plan, nothing contained in the Plan may be deemed or construed in any way as an admission by the Debtors or its Bankruptcy Estates with respect to any fact or any matter set forth in the Plan, including the amount or allowability of any Claim, or the value of any property of the Bankruptcy Estates.

Notwithstanding anything to the contrary in the Plan, if the Plan is not confirmed or the Effective Date does not occur, the Plan will be null and void, and nothing contained in the Plan will:

- (a) be deemed to be an admission by the Debtors with respect to any matter discussed in the Plan, including liability on any Claim or the propriety of any Claim's classification; (b) constitute a waiver, acknowledgement, or release of any Claim, Interest, or any claims held by the Debtors; or (c) prejudice in any manner the rights of the Debtors or the Bankruptcy Estates in any further proceedings.

14.2 Revocation of the Plan.

The Debtors reserve the right to withdraw the Plan before the Confirmation Date.

14.3 Successors and Assigns.

The rights, benefits, and obligations of any Entity referred to in the Plan will be binding on, and will inure to the benefit of any heir, executor, administrator, successor, or assign of that Entity.

14.4 Nonconsensual Confirmation.

In the event that Classes entitled to vote fail to accept the Plan in accordance with Bankruptcy Code Section 1129(a)(8), the Debtors reserve the right to modify the Plan in accordance with Bankruptcy Code Section 1127(a). In accordance with Section 1127 of the Bankruptcy Code, the Debtors reserve the right to alter, amend, modify, revoke or withdraw the Plan or any Plan exhibit or schedule including amending or modifying it to satisfy the requirements of the Bankruptcy Code.

111

1 **14.5 Destruction of Records.**

2 The Reorganized Debtors may, but are not required to, seek one or more orders of the
3 Bankruptcy Court authorizing the abandonment and destruction of their books and records at such
4 time as the recordkeeping time periods required by applicable law, custom or practice have expired.

5 **14.6 Saturday, Sunday and Legal Holiday.**

6 If any payment or act under the Plan should be made or performed on a day that is not a
7 Business Day, then the payment or act may be completed the next succeeding day that is a Business
8 Day, in which event the payment or act will be deemed to have been completed on the required day.

9 **14.7 Plan Interpretation.**

10 The headings contained in the Plan are for convenience of reference only and do not limit or
11 otherwise affect in any way the meaning or interpretation of the Plan. All references in the Plan to
12 the singular will be construed to include references to the plural and vice versa. All references in
13 the Plan to any one of the masculine, feminine or neuter genders will be deemed to include
14 references to both other such genders. References to the Debtors will also include the Reorganized
15 Debtors (or vice versa) as the context requires. All references in the Plan to a Section or an Article
16 mean the appropriately numbered Section or Article of the Plan. Whenever the Plan uses the term
17 "including," such reference is deemed to mean "including, but not limited to."

18 **14.8 Modification.**

19 The Debtors may propose amendments to or modifications of the Plan under Section 1127(a)
20 of the Bankruptcy Code and Bankruptcy Rule 3019 at any time prior to the conclusion of the hearing
21 on Confirmation of the Plan. After the Confirmation Date, the Debtors may modify the Plan in
22 accordance with Section 1127(b) of the Bankruptcy Code and Bankruptcy Rule 3019.

23 **14.9 Setoff/Recoupment.**

24 Nothing contained in this Plan constitutes a waiver or release by the Debtors or Reorganized
25 Debtors of any right of setoff or recoupment the Debtors may have against any Creditor.

26 **14.10 Waiver.**

27 After the Confirmation Date, except as otherwise specifically set forth in the Plan, any term
28 of the Plan may be waived only by the party or parties entitled to the benefit of the term to be

1 waived.

2 **14.11 Notices.**

3 All notices required or permitted to be made in accordance with the Plan must be in writing
4 and delivered personally or by first class mail, as follows:

5 If to the Reorganized Debtors

6 Community Towers I-IV, LLC
7 Attn: John L. Feece
8 111 W. Saint John Street, Suite 705
9 San Jose, C 95113

10 With a copy to:

11 John Walshe Murray
Murray & Murray
A Professional Corporation
19400 Stevens Creek Boulevard, Suite 200
Cupertino, California 95014

12 and if to a holder of an Allowed Claim or Allowed Interest, at the address prescribed by
13 Section 6.4.2. Notices will be deemed given when delivered or three days after deposit in the United
14 States mail. Any Entity may change the address at which such entity is to receive notices under the
15 Plan by filing a written notice with the Bankruptcy Court and serving such notice on the
16 Reorganized Debtors and their counsel.

17 **14.12 Reservation of Rights.**

18 Neither the filing of the Plan nor any statement or provision contained in the Plan or in the
19 Disclosure Statement, nor the taking by any party in interest of any action with respect to the Plan,
20 will: (a) be or be deemed to be an admission against interest; and (b) until the Effective Date, be or
21 be deemed to be a waiver of any rights any party in interest may have: (i) against any other party in
22 interest; or (ii) in any of the assets of any other party in interest, and, until the Effective Date, all
23 such rights are specifically reserved. In the event that the Plan is not confirmed or fails to become
24 effective, neither the Plan nor the Disclosure Statement nor any statement contained in the Plan or in
25 the Disclosure Statement may be used or relied upon in any manner in any suit, action, proceeding or
26 controversy within or without these Bankruptcy Cases involving the Debtors.

27 / / /

28 / / /

1 **14.13 Exhibits.**

2 All exhibits attached to the Plan are hereby incorporated into the Plan by this reference.

3 Dated: March 27, 2012

COMMUNITY TOWERS I, LLC
A DELAWARE LIMITED LIABILITY COMPANY

5 By: /s/ John L. Feece
6 John L. Feece
7 Responsible Individual

8 Dated: March 27, 2012

COMMUNITY TOWERS II, LLC
A DELAWARE LIMITED LIABILITY COMPANY

10 By: /s/ John L. Feece
11 John L. Feece
12 Responsible Individual

13 Dated: March 27, 2012

COMMUNITY TOWERS III, LLC
A DELAWARE LIMITED LIABILITY COMPANY

15 By: /s/ John L. Feece
16 John L. Feece
17 Responsible Individual

18 Dated: March 27, 2012

COMMUNITY TOWERS IV, LLC
A DELAWARE LIMITED LIABILITY COMPANY

20 By: /s/ John L. Feece
21 John L. Feece
22 Responsible Individual

23 MURRAY & MURRAY,
24 A PROFESSIONAL CORPORATION

25 By: /s/ John Walshe Murray
26 John Walshe Murray
27 Attorneys for Debtors